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[Jones v. Tennessee Valley Authority](#), 89-ERA-27 (Sec'y June 3, 1994)

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DATE: June 3, 1994
CASE NO. 89-ERA-27

IN THE MATTER OF

JAMES C. JONES,

COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER DISAPPROVING SETTLEMENT
AND REMANDING CASE

Before me for review is the Recommended Order of Dismissal (R.O.) of the Administrative Law Judge (ALJ) issued on November 9, 1989, in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). In his R.O., the ALJ reviewed the parties' Conciliation Agreement and Joint Motion for Order of Dismissal, found the terms of the agreement to be "fair to all parties and consistent with provisions of the law," and ordered the case dismissed with prejudice. Pursuant to the parties' request, the ALJ also ordered:

[T]hat the terms of the conciliation agreement entered into between the parties shall be kept confidential by the parties and their attorneys in accordance with that agreement, that after review and approval by the Secretary of Labor, the copy of such agreement submitted for inspection in camera shall be resealed and returned to the attorneys for the Tennessee Valley Authority, and that the Department of Labor's file . . . concerning the inspection and approval of the

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agreement shall be sealed and the contents thereof not subject to disclosure other than by order of the Secretary of Labor after notice to counsel for the parties and an opportunity to be heard.

R.D. at 1.

Section 210(b)(2)(A) of the ERA, 42 U.S.C. § 5851(b)(2)(A), provides that, "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint." The Secretary's role is to review the terms of the settlement agreed upon by the private parties to ensure that they are fair, adequate and reasonable to settle Complainant's allegations that Respondent violated the ERA. [1] *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-1154 (5th Cir. 1991); *Thompson v. U.S. Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 10, Sec. Ord., March 23, 1989, slip op. at 1-2.

The Secretary consistently has held that once submitted for review, the parties' submissions including Settlement Agreements and all related documents become a part of the public record in the case and are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requiring Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. [2] See *Wampler v. Pullman-Higgins Co.*, Case No. 84-ERA-13, Sec. Final Ord. Disapproving Settlement and Remanding Case, Feb. 14, 1994, slip op. at 3-4; *Corder v. Bechtel Energy Corp.*, Case No. 88-ERA-9, Sec. Ord., Feb. 9, 1994, slip op. at 4-5; *DeBose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Sec. Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3; *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7 and 10, 92-WPC-6, 7, 8, and 10, Sec. Final Ord. Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 5-6.

I also have addressed the issue of sealing settlement agreements and placing related documents in a restricted access portion of the record pursuant to 29 C.F.R. § 18.56 (1992), and have rejected such requests. See *Corder*, slip op. at 1-5; *DeBose*, slip op. at 2-4; *Mitchell v. Arizona Public Service Co.*, Case Nos. 92-ERA-28, 29, 35 and 55, Sec. Ord. Approving Settlement Agreement and Dismissing Cases, June 28, 1993, slip op. at 2.

Based on the precedent set forth above, I reject the parties' request that the case files be sealed, and I do not approve the confidentiality provisions of the conciliation agreement and joint motion. Accordingly, I decline to adopt the ALJ's recommended order and remand the case for hearing.

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SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] The Department of Labor does not simply provide a forum for private parties to litigate their private employment discrimination suits. Whistleblowing under the employee protection provision of the ERA may expose not just private harms, but health and safety hazards to the public. The Secretary represents the public interest in keeping channels of information open by assuring that settlements adequately protect whistleblowers. *Polizzi v. Gibbs & Hill, Inc.*, Case No. 87-ERA-38, Sec. Ord. Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing Case, Jul. 18, 1989, slip op at 3.

[2] Department of Labor regulations implementing the FOIA provide that submitters of information may designate specific information as confidential commercial information to be handled as provided in those regulations. 29 C.F.R. § 70.26(b) (1991). When FOIA requests for such information are received, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c), the submitter will be given a reasonable period of time to state its objections to disclosure, 29 C.F.R. § 70.26(e), and the submitter will be notified if a decision is made to disclose the information. 29 C.F.R. § 70.26(f). If the information is withheld and suit is filed by the requestor to compel disclosure, the submitter will be notified. 29 C.F.R. § 70.26(h).